

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VERNA S. SCHICKEDANZ

Claimant

VS.

**WOLF CREEK NUCLEAR OPERATING
CORPORATION**

Self-Insured Respondent

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Docket No. 248,461

ORDER

Respondent appealed the November 26, 2003 Post Award Medical Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery. The Board placed this matter on its summary docket for disposition without oral argument.

APPEARANCES

George H. Pearson of Topeka, Kansas, appeared for claimant. John David Jurcyk of Roeland Park, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record in this post-award request for additional medical treatment is the September 4, 2003 post-award hearing transcript.

ISSUES

By a September 25, 2003 Order, this Board determined claimant was injured on June 3, 1999, while working for respondent. Claimant's accident occurred when she was struck around the shoulders, neck, head and arms by an industrial buffing machine that spun out of control. Both the Judge and the Board concluded claimant sustained a 17 percent whole body functional impairment due to the accident for injuries to the cervical spine and adhesive capsulitis in both shoulders.

Claimant now requests additional medical treatment. And in the November 26, 2003 Post Award Medical Order for Medical Treatment, Judge Avery granted claimant's request for additional treatment and authorized Dr. Arthur Jenny to treat claimant until further order.

Respondent contends Judge Avery erred. Respondent contends the herniated disc claimant received in the June 3, 1999 accident was repaired and claimant was later released from medical care. Respondent argues claimant has failed to prove that her present neck problems, including any herniated disc that she may now have, are related to the June 1999 accident. Consequently, respondent requests the Board to deny claimant's request for additional medical treatment.

Conversely, claimant argues her present request for additional medical treatment resulted from a worsening of symptoms that she has experienced since the June 1999 accident. Claimant contends that she has not sustained a new injury or accident and, therefore, her increased symptoms are more likely than not related to the June 1999 accident.

The only issue before the Board on this appeal is whether claimant has established her present need for medical treatment is related to the June 3, 1999 accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the parties' arguments, the Board finds and concludes:

On June 3, 1999, claimant injured her neck and shoulders while working for respondent. Dr. Arthur Steven Daus diagnosed a herniated disc at C5-6 and in November 1999 the doctor performed an anterior cervical microdisectomy with foraminotomies on both the right and left sides and fused the vertebrae.

At the September 4, 2003 post-award hearing, claimant testified she has experienced continuous pain since the accident and that it has progressively worsened. According to claimant, she now has more intense neck pain, more intense headaches, more muscle spasms and weakness in her arms. Claimant also explained her neck pain was now more intense on the left side where previously it had been more intense on the right. Claimant is not aware of any new injury that might be responsible for her increased symptoms.

According to claimant, she had recently received some medical treatment from a Dr. Sankoorikal, Dr. Wade Welch and a Dr. Nicolae. In January 2003 claimant underwent one epidural injection and in April 2003 she underwent an MRI. According to claimant, the doctors wanted an MRI before giving her a second epidural injection. No doctor testified in this post-award proceeding. And the only medical document presented at the post-award hearing was a copy of the results from an April 2003 MRI. The MRI report read, in part:

Impression: Since previous examination dated 11/15/2000 (Coffey County Hospital). There has been minimal change in the appearance of the MRI cervical spine except for a tiny central herniated disc having developed at C4-C5 centrally. Postoperative change is seen at C5-C6 making it difficult to exclude hypertrophic change or a herniated disc at C5-C6 on the left due to the metallic artifact. This asymmetry at C5-C6 is seen on only one set of images and not confirmed on other images to suggest thecal sac indentation of a significant amount.

. . . .

Findings: A postoperative metallic artifact is seen at the C5-C6 level. This indents the thecal sac making it difficult to exclude hypertrophic change or even a herniated disc at C5-C6 on the left on the axial images. This is not confirmed on all images. No other disc abnormality is seen except for a tiny central protrusion of the disc at C4-C5 without significant involvement of the thecal sac. The cord has a normal size, shape, and signal pattern. The neural foramen are patent. No other abnormality is seen.¹

The record is not entirely clear but it appears respondent initially authorized claimant to see Dr. Welch but later withdrew that authority. Claimant's testimony is uncontradicted that during the week before the September 2003 post-award hearing she consulted a neurosurgeon, Dr. Arthur Jenny, as she "couldn't handle the pain anymore and Wolf Creek wouldn't do anything."² Moreover, claimant's testimony is uncontradicted that Dr. Jenny told her he wanted to gather additional information but he believed there was something pressing upon her spine at C5-6 that was causing most of her pain.

Although it is true claimant did not present either testimony or a report from a physician that links her present symptoms and need for medical treatment to her June 3, 1999 accident, the record does establish she has experienced a progressive worsening of the symptoms that were caused by her accident. Accordingly, the Board finds no reason to disturb the Judge's order for additional medical treatment. Claimant is entitled to receive medical treatment for the natural consequences of the injuries that she received in her June 1999 accident.

¹ P.A.H. Trans., Cl. Ex. 1.

² P.A.H. Trans. at 8.

The Board affirms the Judge's order for additional medical treatment. Accordingly, respondent is responsible for providing claimant with the additional medical treatment that is a consequence of the June 1999 accident.

AWARD

WHEREFORE, the Board affirms the November 26, 2003 Post Award Medical Order for Medical Treatment.

IT IS SO ORDERED.

Dated this ____ day of February 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: George H. Pearson, Attorney for Claimant
John David Jurcyk, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director